

TENTATIVE RULINGS for CIVIL LAW and MOTION
November 23, 2009

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6942

TENTATIVE RULING

Case: Grant v. Bauer

Case No. CV G 07-1048

Hearing Date: November 23 2009 Department Fifteen 9:00 a.m.

Plaintiffs Mark A. Grant and Robert William's motion to recover costs in connection with Defendant Chris Bauer's relief from default is **GRANTED**. (Code Civ. Proc., §473, subd. (b).) Michael M. McKone shall pay plaintiffs \$188.00, by December 11, 2009.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: GR Trucking, LLC v. Michael A. Long Construction, Inc.

Case No. CV CV 09-836

Hearing Date: November 23, 2009 Department Fifteen 9:00 a.m.

Plaintiff GR Trucking, LLC's unopposed motions to compel defendant Michael A. Long Construction, Inc. to respond to form interrogatories, special interrogatories, and demands for inspection are **GRANTED**. (Code Civ. Proc., §§ 2030.290 and 2031.300.) Defendant shall serve verified answers to the above-listed discovery requests (together with any responsive documents), without objection, by December 11, 2009.

The unopposed motion to have the truth of the matters stated in the plaintiff's first set of request for admissions to the defendant deemed admitted is **GRANTED**. (Code Civ. Proc., § 2033.280, subds. (b) and (c); § 2030.290, subd. (c) § 2031.300, subd. (c).)

The request for monetary sanctions against defendant is **GRANTED** in the amount of \$920.00. (Code Civ. Proc., § 2033.280, subd. (c).)

Plaintiff shall serve the defendant with a copy of this ruling by no later than November 25, 2009.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice, except as provided herein, is required.

TENTATIVE RULING

Case: **Johnson v. Segura**
Case No. CV PM 08-1543
Hearing: **November 23, 2009** **Department Fifteen** **9:00 a.m.**

Petitioner must state in the verified petition how the net settlement proceeds will be disposed. The proposed disposition must comply with Probate Code sections 3600 *et seq.* (Code Civ. Proc., § 372, subd. (a).)

The petitioner and William Johnson are directed to appear or to show good cause why they should not be required to appear. (Cal. Rules of Court, rule 7.952.) If the petitioner and Mr. Johnson choose to show good cause, they should do so by filing of a declaration before the hearing setting forth the facts supporting good cause. If the petitioner and Mr. Johnson fail to appear at the hearing and the court has not excused their personal appearance, the petition will be denied without prejudice. No request for a hearing is required.

TENTATIVE RULING

Case: **Ochoa v. Diablo Funding Group, Inc.**
Case No. CV CV 09-2398
Hearing Date: **November 23, 2009** **Department Fifteen** **9:00 a.m.**

Plaintiffs bear the burden of establishing all of the elements necessary to support the issuance of a preliminary injunction. (Weil & Brown, Calif. Practice Guide: Civ. Proc. Before Trial (The Rutter Group 2009) ¶ 9:632.1.) Plaintiffs did not submit a declaration supporting their motion. Where a verified complaint is the basis of a motion for preliminary injunction, the complaint is treated as an affidavit. Its sufficiency must be tested by the same rules applicable to oral testimony. (*Bank of America National Trust & Savings Ass'n v. Williams* (1948) 89 Cal.App.2d 21, 23.)

The complaint, which is written in English, is verified by plaintiff Jose Ochoa, who allegedly does not speak, read or write in English. (Complaint ¶ 8.) There is no evidence that Mr. Ochoa understands the factual allegations in the complaint. Plaintiff Nora Ochoa also verified the complaint. However, it is alleged that Mrs. Ochoa was “excluded and not involved in the transaction”. (Complaint ¶ 8.) There is no evidence that Mrs. Ochoa has personal knowledge of any of the facts alleged in the complaint.

The complaint does not plead fraud with the requisite particularity (*Lazar v. Superior Court of Los Angeles County* (1996) 12 Cal.4th 631; *Tarmann v. State Farm Mut. Auto. Ins. Co.* (1991) 2 Cal.App.4th 153) and the plaintiffs did not submit a declaration containing evidentiary facts sufficient to establish their claims of fraud. Additionally, the plaintiffs failed to establish that

any of the defendants owed a duty of care to the plaintiffs or that the alleged conduct by the defendants supports a cause of action for negligence against the named defendants.

Based on the above, the temporary restraining order is dissolved and the plaintiffs' motion for preliminary injunction is **DENIED WITHOUT PREJUDICE**.

Plaintiffs shall serve the defendants with a copy of the Court's ruling by no later than November 24, 2009.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice, except as provided herein, is required.

TENTATIVE RULING

Case: **Ragsdale v. Galbraith (and related cross-action)**
Case No. CV CV 08-1705

Hearing Date: **November 23, 2009** **Department Fifteen** **9:00 a.m.**

Cross-defendants Enrg, LLC's and Charles Ehrlich's demurrer to Dean Newberry dba Talbott Solar Homes' first amended cross-complaint is **DROPPED**. The cross-complaint was dismissed on October 15, 2009.

TENTATIVE RULING

Case: **Sacramento Regional County Sanitation District v. Nor-Cal Beverage Co., Inc., et al.**
Case No. CV ED 04-0403

Hearing Date: **November 23, 2009** **Department Fifteen** **9:00 a.m.**

Plaintiff's motion to clarify the ambiguity in the final order of condemnation *nunc pro tunc* is **GRANTED**. (Code Civ. Proc., § 473, subd. (d); Plaintiff's Request for Judicial Notice, Exhibits A-T.)

If no hearing is requested, this tentative ruling is effective immediately. Plaintiff shall serve a copy of the order on Defendants by December 1, 2009.

TENTATIVE RULING

Case: **Sternes v. Aspen Pest Management**
Case No. CV PO 08-3001
Barrow v. Aspen Pest Management
Case No. CV PO 09-662

Hearing Date: **November 23, 2009** **Department Fifteen** **9:00 a.m.**

Counsel are directed to appear. No request for hearing is required.